IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Dhanwant Kaur v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.691/1990
under Article 226 of the Constitution of India.

Date of Order : 30th January, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. K.L.Thakur, Addl.Advocate General.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

Validity and propriety of the judgment dated 19.12.1989 passed by learned Board of Revenue for Rajasthan, Ajmer in Ceiling Appeal No.221/85/Ganganagar is under challenge in present writ petition.

Facts necessary for adjudication of controversy involved are that the proceedings under Chapter III-B of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as “the Act of 1955”) were initiated against one Smt. Basant Kaur and the same were dropped by an order dated 1.10.1971 passed by Sub

Divisional Officer, Raisinghnagar by holding that Smt. Basant Kaur was not holding agricultural land beyond the ceiling limits prescribed. The ceiling case was reopened against Smt. Basant Kaur on coming into force of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as "the Act of 1973"). The proceedings under the Act of 1973 too were dropped, however, the same were ordered to be reopened by the State Government under an order dated 10.9.1976. The Additional Collector, Sriganganagar consequent to the order dated 10.9.1976 conducted ceiling proceedings afresh under the Act of 1973 and by an order dated 28.2.1979 held 28.17 bighas of land in excess then to prescribed ceiling limits with Smt. Basant Kaur. Smt. Basant Kaur being aggrieved by order dated 28.2.1979 preferred a revision petition before Board of Revenue for Rajasthan, Ajmer. The Board of Revenue by its order dated 18.9.1979 accepted the revision petition and remanded the case to learned Additional Collector for rehearing of the ceiling cases under the Act of 1973 as well as under Chapter III-B of the Act of 1955 separately and also ordered to pass separate orders in each case. The Additional Collector, Sriganganagar by order dated 10.5.1985 in Ceiling Case No.20/76 under the Act of 1973 dropped the ceiling proceedings as whatever transfers said to be made by Smt. Basant Kaur were treated bonafide. The Additional Collector by an another order dated 10.5.1985 also dropped the proceedings initiated

against Smt. Basant Kaur under Chapter III-B of the Act of 1955. The State Government gave challenge to the order dated 10.5.1985 passed by Additional Collector while dealing with the ceiling case of the petitioner under the Act of 1973 by way of filing an appeal under Section 23(2-A) of the Act of 1973. No challenge was given to the order dated 10.5.1985 passed by Additional Collector whereby the proceedings under Chapter III-B of the Act of 1955 were dropped against Smt. Basant Kaur. It is pertinent to note that during pendency of proceedings before Additional Collector Smt. Basant Kaur died but her legal representatives i.e. the present petitioner was not brought on record. The State Government also preferred appeal giving challenge to the order dated 10.5.1985 against Smt. Basant Kaur. During pendency of appeal the present petitioner was substituted as respondent in place of Smt. Basant Kaur being her sole representative. The Board of Revenue by order impugned dated 19.12.1989 accepted the appeal and set aside the order dated 10.5.1985. The Board while doing so held that the petitioner was having 19.5 bighas of land in excess to the prescribed ceiling limits and, therefore, ordered for resuming the same.

In the instant petition for writ while giving challenge to the order dated 19.12.1989, it is contended by counsel for the petitioner that the order dated 19.12.1989 is illegal on the count that the sale

made by Smt. Basant Kaur in favour of Dhanindra Singh, Kulvindra Kaur, Ravindra Singh, Tejvindra Singh and Jasvindra Singh was executed on 21.12.1969 though it was registered on 1.6.1971, as such there was no occasion for the Board to hold the sale as not bonafide one.

Per contra, it is stated by counsel for the respondents that the Board after considering all the facts available on record held that the sale deed was executed on 1.6.1971 and that too was made in favour of Dhanindra Singh, Kulvindra Kaur, Ravindra Singh, Tejvindra Singh and Jasvindra Singh who are nobody else but the sons and daughters of present petitioner, as such the same was made only to avoid the ceiling proceedings.

Heard counsel for the parties.

It is not in dispute that the sale of part of the land in question was registered on 1.6.1971, however, the deed itself bears the fact that the sale was executed on 21.12.1969 and possession of the land was given immediately thereafter. The Act of 1973 came into force on 28.3.1973. The petitioner, therefore, cannot be presumed to be having any knowledge about introduction of the Act of 1973 on 1.6.1971, as such the contention that execution of the sale was shown to be on 21.12.1969 with view to ignore and avoid the

application of the Act of 1973, does not appear to be correct. The Board of Revenue merely on the count that sale was executed in favour of grand sons of Smt. Basant Kaur held the sale not bonafide.

I am of the opinion that the sale being executed on 21.12.1969 was not at all subjected to be assessed as to the same was bonafide or not. The sale deed was certainly registered on 1.6.1971 but it was executed on 21.12.1969 which is not at all in dispute. In view of it the finding given by Board of Revenue is erroneous and the same deserves to be reversed.

The writ petition is accordingly allowed. The judgment dated 19.12.1989 passed by learned Board of Revenue is quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.